

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 12-1581 (DSD/TNL)

Elainaise Mervil,

Plaintiff,

v.

ORDER

United States of America -
FTCA, Warden Nicole English,
M.D. Sandra Luring, M.D.
Donald Collins, Counselor
Matthew Levisay, Mary Ellen
Rivers-Graham HSA,

Defendants.

Elainaise, Mervil, #20982-018, FCI Waseca, P.O. Box 1731,
Waseca, MN 56093, pro se.

Friedrich A.P. Siekert, Assistant U.S. Attorney, 300
South Fourth Street, Suite 600, Minneapolis, MN 55415,
counsel for defendants.

This matter is before the court sua sponte. On January 6, 2014, Chief Magistrate Judge Arthur J. Boylan recommended that the defendants' motion to dismiss be granted and that plaintiff Elainaise Mervil's claims be dismissed with prejudice. The report and recommendation noted that "[w]ritten objections must be filed with the [c]ourt before January 21, 2014." ECF No. 86, at 18. Mervil did not file any timely objection, and the court adopted the report and recommendation on January 22, 2014. ECF No. 88. Mervil objected on January 23, 2014. ECF No. 90. On February 6, 2014, Mervil filed a notice of appeal to the Eighth Circuit Court of Appeals. ECF No. 91.

The court has an "inherent power to determine as a preliminary matter its own subject matter jurisdiction." Hunter v. Underwood, 362 F.3d 468, 475 (8th Cir. 2004) (citation and internal quotation marks omitted). The filing of a notice of appeal is "an event of jurisdictional significance" that confers jurisdiction on the court of appeals and divests the district court of control over those aspects of the case involved in the appeal. Liddell v. Bd. of Educ., 73 F.3d 819, 822 (8th Cir. 1996) (citation omitted). "[A] federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously." Hunter, 362 F.3d at 475. Moreover, a district court that is divested of jurisdiction may not reexamine or supplement the order appealed. Missouri ex rel. Nixon v. Coeur D'Alene Tribe, 164 F.3d 1102, 1106 (8th Cir. 1999). As a result, the court is without jurisdiction to consider the untimely objections. Accordingly, **IT IS HEREBY ORDERED** that further proceedings in this matter are stayed pending resolution of plaintiff's appeal to the Eighth Circuit Court of Appeals.

Dated: February 13, 2014

s/David S. Doty
David S. Doty, Judge
United States District Court